

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

INDECK KEYSTONE ENERGY,)
LLC, a Delaware limited)
liability company,) CONFIDENTIAL
Plaintiff,) CIVIL ACTION
vs.) No. 04-CV-325E
VICTORY ENERGY OPERATIONS,) Judge Sean J.
McLaughlin)
LLC, a Delaware limited)
liability company,)
Defendant.)

The videotape deposition of MARK WHITE taken on
behalf of the Plaintiff before Pamela B. Stinchcomb,
Certified Shorthand Reporter in and for the State of
Oklahoma, on the 1st day of February, 2006, in the
City of Tulsa, State of Oklahoma, pursuant to the
stipulations of the parties.

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A P P E A R A N C E S

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John Viskup
Martin Swabb

S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto that this deposition is
being taken pursuant to notice and that the same may
be taken at this time and place.

It is further stipulated and agreed that this
deposition may be taken pursuant to the Federal
Rules
of Civil Procedure and that the same may be taken at
this time and place.

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1 then just check to see if -- if overhead and profit
2 were maintained. And if they were, then the job came
3 out as expected. If they don't, they came out
4 better, then the job came out higher in profit. If
5 it came out less, it came out less than expected.

6 Q. Is there a standard percentage of the sale
7 price that VEO allocates to overhead?

8 A. Overhead changes from year to year. I
9 don't know that we use a standard overhead factor for
10 each and every project. When applying profit and
11 loss, we'll take the overhead. If the project spans
12 in one particular calendar year, we will take the
13 overhead for that particular calendar year for what
14 we believe it will be. If it spans over two years,
15 what we might do is we would take the -- or what we
16 would do is we'd take the overhead that spans over
17 the two-year period and the percentage -- the
18 percentage of the overhead as it's applied to the
19 overall percent.

20 Q. What was the overhead percentage in 2005?

21 A. I don't know.

22 Q. What was the overhead percentage in 2004?

23 A. I don't know.

24 Q. Does VEO have any documentation showing
25 what those overhead percentages were?

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1 A. We may. I don't know.

2 Q. What was the profit percentage for 2005 --

3 A. I don't know.

4 Q. -- per project? What was the profit
5 percentage in 2004?

6 A. I don't know.

7 Q. If I wanted to verify a calculation that
8 VEO used to determine profit as with Idaho State
9 University, what documentation would I look at?

10 MR. SHEEAN: Objection to the term
11 "verify". Vague.

12 A. Probably the easiest way to verify that
13 would to have our controller just provide the
14 equation that we use.

15 Q. (By Mr. Gisleson) Was there a physical
16 calculation that was performed to arrive at the Idaho
17 State University profit number?

18 A. I believe so.

19 Q. Does VEO still have a copy of that
20 calculation?

21 A. I don't know.

22 MR. GISLESON: It's obviously
23 information we'll need supplemented.

24 MR. SHEEAN: Well, I think our
25 production is consistent with what the judge

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1 ordered.

2 Q. (By Mr. Gisleson) Under Item Number 16,
3 VEO's license of different and/or additional boiler
4 technologies from other entities and/or individuals
5 for industrial watertube boilers. Since January
6 2003, has VEO licensed any watertube boiler
7 technology other than the technology licensed from
8 EPTI?

9 A. No.

10 Q. Is the license agreement with EPTI the only
11 license agreement that VEO entered for watertube
12 boilers after January 2003 to the present?

13 MR. SHEEAN: I'm going to object to
14 the term license -- license here that you're using
15 with the last question and with this one because I
16 think it's potentially vague and confusing. And
17 I'll give you an example. Yesterday Mr. Viskup was using
18 the situation where they were representing Superior
19 Boiler as an instance where they were licensed. So
20 if -- I'm just -- you know, for clarification sake,
21 carve that out and then ask the question, you might
22 get a clearer answer.

23 Q. (By Mr. Gisleson) Setting aside any
24 contracts that VEO entered with sales
25 representatives, has it licensed any technology

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1 pertaining to watertube boilers, other than with
2 EPTI, since January 2003?

3 A. No.

4 Q. Turning to Item Number 20, the source of
5 the design of a Voyager series watertube boiler
6 including when design of that boiler commenced, the
7 engineers involved in developing that design, the
8 identification of drawings and specifications for the
9 design and the similarities and differences between
10 the Voyager series and the Keystone direct-fired
11 watertube boiler, including whether the Voyager
12 incorporates any of the Keystone technology. What is
13 the source of the design of the Voyager series
14 watertube boiler?

15 MR. SHEEAN: Objection, vague as to
16 the word "design" but you can understand if you
17 understand.

18 A. Okay. Well, I'll take design as the -- I
19 guess the boiler as a whole. And what I mean by that
20 is let's carve out burners, any peripheral equipment,
21 so we're just talking about raw boiler, if that's
22 acceptable. The source of the design actually comes
23 from me and with some input from Trent Miller. I
24 actually sat down and determined basically where we
25 wanted to go with this thing, what markets we wanted

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1 to serve, what capacity range we wanted to compete
2 in, domestic or international marketing, and then
3 determined, you know, what type of boiler would be
4 the best suited for what we anticipate considering
5 our manufacturability, our engineering expertise, the
6 people we have within the company and their
7 backgrounds.

8 So in terms of the source, the source was
9 generated from me. We so chose to use a -- an "O"
10 type boiler, which includes a drum, over drum with a
11 open furnace. The "O" type is just an industry --
12 industry -- I don't want to use the term standard,
13 but I think it's just a reference to a particular
14 type, you know, in terms of configuration.

15 I had background at previous -- previously
16 to my employment not only with Zurn, Erie Power,
17 Alburg, as well as Victory Energy, prior to my
18 employment at Henry Vogt Machine Company. I worked
19 for Nebraska Boiler for a period of from 1984 to
20 1989. So I'm well versed in "O" type "D" type "A"
21 type, open bottom metal, waste heat recovery,
22 including membrane boilers with open with -- with
23 membrane furnaces for HRSG technology as well. So I
24 have a vast experience when it comes to boiler
25 technology.

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1 Q. (By Mr. Gisleson) Prior to the Voyager, had
2 you ever designed an "O" type boiler?

3 A. Have I particularly?

4 Q. Yes.

5 A. Yeah, I have actually.

6 Q. When?

7 A. At Nebraska Boiler I was involved with the
8 Max fire design, involved another what we're
9 considering "O" type waste heat boilers. Did not
10 only the thermal design but I was involved in some
11 of -- some of the mechanical design with Trent Miller
12 and others.

13 Q. What was your role in designing the Max
14 fire boiler at Nebraska?

15 A. Well, the sales engineer -- and at that
16 time Nebraska boiler was not only involved in the --
17 the design of the unit, he was involved in the design
18 estimate and sale of the unit and about everything
19 else that went along with that. So anywhere from a
20 sizing and rating of the boiler to choosing number of
21 tubes, configuration, basically all the way through.

22 Q. In design of the Max fire, were you
23 starting from scratch?

24 MR. SHEEAN: Objection, vague.

25 A. Sometimes. I mean, it depends. You get in

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1 specific applications. It depends on the
2 application. There were some, I guess, some -- some
3 boilers that were used as a template. We had a few
4 models, none of which were really cast in stone.
5 However, there are always applications that we were
6 starting from scratch.

7 Q. (By Mr. Gisleson) When you say starting
8 from scratch, what do you mean?

9 A. Just that. You start from setting your
10 tube pitch, longitudinal pitch, tube diameter,
11 extended fin surface, amount of radiant surface, if
12 you have it, amount of convective surface as you
13 have, the drum sizes, including the steam in the mud
14 drum, configuration of the unit, shipability of the
15 unit, mechanical parameters of the unit, all the way
16 through.

17 Q. When was the last time while you were with
18 Nebraska boiler that you personally designed an "O"
19 type boiler from scratch?

20 A. Oh, I don't recall. It was too long ago to
21 remember.

22 Q. Approximately?

23 A. Last time? That probably would have been
24 somewhere probably the last two or three years I was
25 there, so prior to my departure in '89. So somewhere

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1 around that time frame.

2 Q. In what years?

3 A. Probably '87 to '89 time frame be a guess
4 at this point. You're asking me something that
5 happened more than a few days ago.

6 Q. When was the next time that you personally
7 were involved in designing an "O" type boiler from
8 scratch after 1989, approximately?

9 A. I did some thermal design work at Vogt.
10 Those weren't really "O" type boilers. Large waste
11 heat recovery units. I did some thermal rating
12 there. At Zurn I may have been involved in a couple
13 of waste heat projects. Well, I was involved in the
14 Idaho University project, basically not in the actual
15 design of the unit per se but in reviewing the design
16 and looking through it.

17 Q. Anything else?

18 A. No, not that I recall.

19 Q. When you were involved with designing "O"
20 type boilers from scratch at Nebraska Boiler, did you
21 design the entire boiler yourself?

22 A. Not necessarily. I would set up the
23 transverse longitudinal pitch, tube count, tube
24 spacing. If there was the membrane type boiler, it
25 would include the membrane surface, those type of